

**ASSEMBLY BILL**

**No. 1402**

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**Introduced by Committee on Judiciary (Wieckowski (Chair), Alejo, Chau, Dickinson, Garcia, Muratsuchi, and Stone)**

March 12, 2013

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An act to amend Section 6213 of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, as introduced, Committee on Judiciary. Attorneys.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law requires an attorney or law firm receiving or disbursing trust funds to establish and maintain an IOLTA account, as defined, in which the attorney or law firm is required to deposit or invest all specified client deposits or funds. Existing law requires an attorney or law firm establishing an IOLTA account to report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar.

This bill would make a technical correction to a definition related to IOLTA accounts.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6213 of the Business and Professions
- 2 Code is amended to read:
- 3 6213. As used in this article:

1 (a) “Qualified legal services project” means either of the  
2 following:

3 (1) A nonprofit project incorporated and operated exclusively  
4 in California that provides as its primary purpose and function  
5 legal services without charge to indigent persons and that has  
6 quality control procedures approved by the State Bar of California.

7 (2) A program operated exclusively in California by a nonprofit  
8 law school accredited by the State Bar of California that meets the  
9 requirements of subparagraphs (A) and (B).

10 (A) The program shall have operated for at least two years at a  
11 cost of at least twenty thousand dollars (\$20,000) per year as an  
12 identifiable law school unit with a primary purpose and function  
13 of providing legal services without charge to indigent persons.

14 (B) The program shall have quality control procedures approved  
15 by the State Bar of California.

16 (b) “Qualified support center” means an incorporated nonprofit  
17 legal services center that has as its primary purpose and function  
18 the provision of legal training, legal technical assistance, or  
19 advocacy support without charge and which actually provides  
20 through an office in California a significant level of legal training,  
21 legal technical assistance, or advocacy support without charge to  
22 qualified legal services projects on a statewide basis in California.

23 (c) “Recipient” means a qualified legal services project or  
24 support center receiving financial assistance under this article.

25 (d) “Indigent person” means a person whose income is (1) 125  
26 percent or less of the current poverty threshold established by the  
27 United States Office of Management and Budget, or (2) who is  
28 eligible for Supplemental Security Income or free services under  
29 the Older Americans Act or Developmentally Disabled Assistance  
30 Act. With regard to a project that provides free services of attorneys  
31 in private practice without compensation, “indigent person” also  
32 means a person whose income is 75 percent or less of the maximum  
33 levels of income for lower income households as defined in Section  
34 50079.5 of the Health and Safety Code. For the purpose of this  
35 subdivision, the income of a person who is disabled shall be  
36 determined after deducting the costs of medical and other  
37 disability-related special expenses.

38 (e) “Fee generating case” means a case or matter that, if  
39 undertaken on behalf of an indigent person by an attorney in private  
40 practice, reasonably may be expected to result in payment of a fee

1 for legal services from an award to a client, from public funds, or  
2 from the opposing party. A case shall not be considered fee  
3 generating if adequate representation is unavailable and any of the  
4 following circumstances exist:

5 (1) The recipient has determined that free referral is not possible  
6 because of any of the following reasons:

7 (A) The case has been rejected by the local lawyer referral  
8 service, or if there is no such service, by two attorneys in private  
9 practice who have experience in the subject matter of the case.

10 (B) Neither the referral service nor any attorney will consider  
11 the case without payment of a consultation fee.

12 (C) The case is of the type that attorneys in private practice in  
13 the area ordinarily do not accept, or do not accept without  
14 prepayment of a fee.

15 (D) Emergency circumstances compel immediate action before  
16 referral can be made, but the client is advised that, if appropriate  
17 and consistent with professional responsibility, referral will be  
18 attempted at a later time.

19 (2) Recovery of damages is not the principal object of the case  
20 and a request for damages is merely ancillary to an action for  
21 equitable or other nonpecuniary relief, or inclusion of a  
22 counterclaim requesting damages is necessary for effective defense  
23 or because of applicable rules governing joinder of counterclaims.

24 (3) A court has appointed a recipient or an employee of a  
25 recipient pursuant to a statute or a court rule or practice of equal  
26 applicability to all attorneys in the jurisdiction.

27 (4) The case involves the rights of a claimant under a publicly  
28 supported benefit program for which entitlement to benefit is based  
29 on need.

30 (f) “Legal Services Corporation” means the Legal Services  
31 Corporation established under the Legal Services Corporation Act  
32 of 1974-~~(P.L.~~ (*Public Law* 93-355; 42 U.S.C. Sec. 2996 et seq.).

33 (g) “Older Americans Act” means the Older Americans Act of  
34 1965, as amended-~~(P.L.~~ (*Public Law* 89-73; 42 U.S.C. Sec. 3001  
35 et seq.).

36 (h) “Developmentally Disabled Assistance Act” means the  
37 Developmentally Disabled Assistance and Bill of Rights Act, as  
38 amended-~~(P.L.~~ )*Public Law* 94-103; 42 U.S.C. Sec. 6001 et seq.).

39 (i) “Supplemental security income recipient” means an  
40 individual receiving or eligible to receive payments under Title

1 XVI of the federal Social Security Act, or payments under Chapter  
2 3 (commencing with Section 12000) of Part 3 of Division 9 of the  
3 Welfare and Institutions Code.

4 (j) “IOLTA account” means an account or investment product  
5 established and maintained pursuant to subdivision (a) of Section  
6 6211 that is any of the following:

7 (1) An interest-bearing checking account.

8 (2) An investment sweep product that is a daily (overnight)  
9 financial institution repurchase agreement or an open-end money  
10 market fund.

11 (3) An investment product authorized by California Supreme  
12 Court rule or order.

13 A daily financial institution repurchase agreement shall be fully  
14 collateralized by United States Government Securities or other  
15 comparably conservative debt securities, and may be established  
16 only with any eligible institution that is “well-capitalized” or  
17 “adequately capitalized” as those terms are defined by applicable  
18 federal statutes and regulations. An open-end money market fund  
19 shall be invested solely in United States Government Securities  
20 or repurchase agreements fully collateralized by United States  
21 Government Securities or other comparably conservative debt  
22 securities, shall hold itself out as a “money market fund” as that  
23 term is defined by federal statutes and regulations under the  
24 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.),  
25 and, at the time of the investment, shall have total assets of at least  
26 two hundred fifty million dollars (\$250,000,000).

27 (k) “Eligible institution” means either of the following:

28 (1) A bank, savings and loan, or other financial institution  
29 regulated by a federal or state agency that pays interest or dividends  
30 ~~in~~ on the IOLTA account and carries deposit insurance from an  
31 agency of the federal government.

32 (2) Any other type of financial institution authorized by the  
33 California Supreme Court.